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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In re	)	No.	01-30923 DM
PACIFIC GAS & ELECTRIC COMPANY,	)	Chapter	11
Debtor.	)	[Not set for hearing]	

**UNITED STATES TRUSTEE'S  
OBJECTION TO APPLICATION OF OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS FOR AN ORDER EMPLOYING  
PRICEWATERHOUSECOOPERS LLP**

The United States Trustee submits this objection to the Official Committee of Unsecured Creditor's application for an order employing PricewaterhouseCoopers LLP ("PWC") (the "Application"). The Application should not be granted because (1) PWC continues to represent debtor's parent ("PG&E Corp.") and debtor, and (2) PWC's hourly rates exceed the rates it has charged in other recent bankruptcy cases.

**Argument**

The United States Trustee is responsible for, *inter alia*, supervising "the administration of cases . . . under chapter . . . 11" of the Code and is given discretion to file comments with the court with respect to applications for employment of professional

persons. 28 U.S.C. § 586(a)(3).

The United States Trustee has the following objections to the Application:

1. PWC's Continued Representation of Debtor and PG&E Corp May Disqualify It

An attorney or accountant may be employed under 11 U.S.C. § 1103(b) only if the professional does not “represent any other entity having an adverse interest in connection with the case.” Collier’s opines a professional should not be permitted to represent a committee under § 1103(b) if the professional’s other obligations would:

- prevent the professional from vigorous representation of the committee;
- interfere with the professional’s undivided loyalty;
- imperil the confidentiality of information or strategy confided by the committee to the professional; or
- cause the professional to act in a manner different than the professional otherwise would.

7 L. King, COLLIER ON BANKRUPTCY ¶ 1103.04[2][a] at 1103-19 (15<sup>th</sup> ed. rev. 2001); See *Daido Steel v. Official Comm. Unsecured Creditors*, 178 B.R. 129, 131 (N.D. Ohio 1995); *In re Caldor - NY*, 193 B.R. 165, 175 (Bankr. S.D.N.Y. 1996).

The courts have concluded the “disinterestedness” requirement of § 327(a) is relevant to employment of professionals under § 1103(c) because of the separate requirement of disinterestedness found in § 328(c). *In re Caldor - NY*, 193 B.R. at 171. Bankruptcy Code § 328(c) prohibits compensation to a professional:

[I]f at any time during such professional person’s employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

11 U.S.C. § 328(c) (emphasis added).

The Official Committee of Unsecured Creditors (the “Committee”) states in the Application PWC continues to represent debtor and PG&E Corp. on several matters including consulting services, internal audit services, tax consulting and environmental

1 litigation.<sup>1/</sup> PWC's continuing relationship with debtor and its parent, PG&E Corp., renders  
2 the firm ineligible to serve.

3 PWC's has made a determination to continue working for debtor and its parent  
4 despite its engagement by the Committee in this case. Standing alone, this decision  
5 suggests PWC places significant value on the work it does for debtor and its parent. By  
6 continuing to work on these matters, PWC sends a strong signal of the importance of its  
7 continuing involvement in debtor's business affairs. It is not beyond imagining debtor and  
8 its parent could influence PWC through these continuing relationships, the promise of future  
9 engagements and other intangibles.<sup>2/</sup>

10 PWC's continuing engagement by debtor and its parent may result in a conflict  
11 between the Committee and PWC. PWC undoubtedly has obtained confidential  
12 information about debtor and its parent through its work for those companies. PWC  
13 consults on internal auditing for PG&E Corp. and debtor and provides "consulting services  
14 to the Debtor with respect to upgrades to Utility Customer Information System." Lumsden  
15 Decl. ¶ 6. As a professional employed under § 1103(c), PWC owes its undivided loyalty to  
16 the Committee. PWC is in possession of information which could be of use to the  
17 Committee. When the Committee requests that information, PWC will be hard-pressed to  
18 comply. The converse is also true: PWC's continuing employment by debtor and its parent  
19 may result in information passing from the Committee to debtor.

20 2. PWC'S Hourly Rates Appear Less Favorable Than Those Customarily  
21 Employed by PWC

22 The *Guidelines for Compensation and Expense Reimbursement of Professionals and*  
23 *Trustees* (the "Guidelines") adopted by the Bankruptcy Court for the Northern District of  
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25 <sup>1/</sup> This information is contained in the *Supplemental Declaration of Thomas E. Lumsden in Support of*  
26 *"Revised Application of Official Committee of Unsecured Creditors, etc."* (the "Lumsden Decl."). The United  
27 States Trustee assumes the Lumsden Declaration is final and has been filed.

28 <sup>2/</sup> The existence of an "ethical wall" is largely irrelevant to this problem. If debtor or its parent decided to  
bring pressure on PWC to obtain compliance or information, the pressure would be brought on particular  
members of the firm to obtain compliance from other members of the firm. Ethical walls do not prevent pressure  
of this sort. The continuing relationship between debtor and PWC make this kind of pressure possible.

California require professional compensation be "billed at rates, in accordance with practices, no less favorable than those customarily employed by the applicant and generally accepted by the applicant's clients." Guidelines ¶ 8 (emphasis added). The Committee cannot make that showing in this case given the rates PWC has charged clients in other recent chapter 11 cases because PWC's rates have been considerably lower in those cases than the rates it is requesting here. *See Request for Judicial Notice* (Attaching copies of employment applications).

<b>Title</b>	<b>Edwards Theatres Circuit (C.D. Cal. Sept. 2000) RJN "A"</b>	<b>Golden Bear Oil Specialties (C.D. Cal. March 2001) RJN "B"</b>	<b>PG&amp;E Original</b>	<b>PG&amp;E Revised</b>
Partners/Directors	\$400-\$450	\$500-\$595	\$550-\$650	\$550-\$650
Managers	\$300-\$350	\$350-\$495 <sup>3</sup>	\$370-\$540	\$350-\$540
Senior Assoc.	\$200-\$275	\$175-\$325	\$250-\$365	\$175-\$365
Associates	\$150-\$175	(see fn.3)		
Prof. Ass't	\$90	\$85-150	\$75-\$150	\$75-\$150

Absent explanation, it is difficult to conclude an hourly rate for partners and directors which is \$200 greater today than in September 2000 for bankruptcy-related work, is reasonable or PWC's "favorable" rate. The difference in billing rates for the highest priced partners has jumped at least 44% in no less than eight months, and 37% for the lowest priced partner.

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<sup>3</sup> The Golden Bear Oil Specialties application and the Edwards Theatre Circuits application did not break down the categories for partners/directors/managers the same way. In Golden Bear Oil Specialties, the category "managers" includes "directors." That was not true for Edwards Theatre Circuits. Likewise, in Golden Bear Oil Specialties, the category "senior associates" includes "associates".

1 For the foregoing reasons, no order of employment should issue.  
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3 Date: May 22, 2001

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